

APPEAL

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:04-cv-12260-GAO**

Great American Insurance Company et al v. Riso,
Inc. et al
Assigned to: Judge George A. O'Toole, Jr
Cause: 28:1332 Diversity-Insurance Contract

Date Filed: 10/27/2004
Jury Demand: Defendant
Nature of Suit: 110 Insurance
Jurisdiction: Diversity

Plaintiff

**Great American Insurance
Company**

represented by **A. Hugh Scott**
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Plaintiff

**Great American Insurance
Company of New York**

represented by **A. Hugh Scott**
(See above for address)
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Mary F. Licari
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Robert A. Kole
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Sarah E. Eversman
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Plaintiff

**Great American Assurance
Company**

represented by **A. Hugh Scott**
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Mary F. Licari
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Plaintiff

**Great American Alliance
Insurance Company**

represented by **A. Hugh Scott**
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Sarah E. Eversman
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V.

Defendant

Riso, Inc.

represented by **Eric P. Magnuson**
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617-439-2324
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TERMINATED: 05/04/2005
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Defendant

RPSI Enterprises Inc
doing business as
Riso Products of Sacramento

represented by **Martin C. Pentz**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/27/2004	1	COMPLAINT (Exhibit A thru G attached to complaint but not scanned) against RPSI Enterprises Inc, Riso, Inc. Filing fee: \$ 150, receipt number 59618, filed by Great American Alliance Insurance Company, Great American Assurance Company, Great American Insurance Company, Great American Insurance Company of New York. (Attachments: # 1 Civil Category Sheet)(Edge, Eugenia) (Entered: 10/29/2004)
10/27/2004	2	If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Collings. (Edge, Eugenia) (Entered: 10/29/2004)
10/27/2004	3	Summons Issued as to RPSI Enterprises Inc, Riso, Inc.. (Edge, Eugenia) (Entered: 10/29/2004)
10/27/2004	4	CORPORATE DISCLOSURE STATEMENT by Great American Alliance Insurance Company, Great American Assurance Company, Great American Insurance Company, Great American Insurance Company of New York. (Edge, Eugenia) (Entered: 10/29/2004)
12/06/2004	5	AMENDED COMPLAINT against RPSI Enterprises Inc, Riso, Inc. , filed by Great American Alliance Insurance Company, Great American Assurance Company, Great American Insurance Company, Great American Insurance Company of New York.Exhibits A thru F not scanned. c/s (Edge, Eugenia) (Entered: 12/07/2004)
12/13/2004	6	ANSWER to Amended Complaint and Jury Demand by Riso, Inc. c/s.(Edge, Eugenia) (Entered: 12/14/2004)
12/17/2004	7	Unopposed MOTION to Consolidate Cases by Great American Alliance Insurance Company, Great American Assurance Company, Great American Insurance Company, Great American Insurance Company of New York.(Edge, Eugenia) (Entered: 12/20/2004)
12/20/2004	8	Assented to MOTION for Leave to Appear Pro Hac Vice by Richard H. Nicolaides, Sarah E. Eversman, Mary F. Licari by Great American Alliance Insurance Company, Great American Assurance Company, Great American Insurance Company, Great American Insurance Company of New York. c/s (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C)(Edge,

		Eugenia) (Entered: 12/23/2004)
03/01/2005	●	Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>5</u> Motion to Consolidate Cases. (Edge, Eugenia) (Entered: 03/10/2005)
03/10/2005	●	Filing fee: \$ 150.00, receipt number 61048 regarding Motion to Appear Pro Hac Vice (Edge, Eugenia) (Entered: 03/11/2005)
03/11/2005	●	Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>6</u> Motion for Leave to Appear Pro Hac Vice Added Mary F. Licari for Great American Assurance Company; Great American Alliance Insurance Company; Great American Insurance Company and Great American Insurance Company of New York, Sarah E. Eversman for Great American Assurance Company; Great American Alliance Insurance Company; Great American Insurance Company and Great American Insurance Company of New York, Richard H. Nicolaides for Great American Assurance Company; Great American Alliance Insurance Company; Great American Insurance Company and Great American Insurance Company of New York (Edge, Eugenia) (Entered: 03/11/2005)
03/14/2005	●7	NOTICE of Scheduling Conference Scheduling Conference set for 4/4/2005 02:00 PM in Courtroom 9 before Judge George A. O'Toole Jr.. Please mark your calendars accordingly. (Lyness, Paul) (Entered: 03/14/2005)
03/25/2005	●8	Document disclosure: STATEMENT OF PHASE ONE INITIAL DISCLOSURES. by Great American Insurance Company, Great American Insurance Company of New York, Great American Assurance Company, Great American Alliance Insurance Company. c/s(Edge, Eugenia) (Entered: 03/25/2005)
03/25/2005	●9	CERTIFICATE OF CONSULTATION re 8 Document disclosure by Robert A. Kole on behalf of Great American Insurance Company, Great American Insurance Company of New York, Great American Assurance Company, Great American Alliance Insurance Company. c/s (Edge, Eugenia) (Entered: 03/25/2005)
03/28/2005	●10	JOINT STATEMENT re scheduling conference. (Attachments: # <u>1</u> Proposed Order)(Edge, Eugenia) (Entered: 03/29/2005)

03/28/2005	<u>11</u>	CERTIFICATE OF CONSULTATION re <u>10</u> Joint statement re scheduling conference by Eric P. Magnuson, Martin C. Pentz on behalf of Riso, Inc.. (Edge, Eugenia) (Entered: 03/29/2005)
04/04/2005		Electronic Clerk's Notes for proceedings held before Judge George A. O'Toole Jr.: Status Conference held on 4/4/2005. Fact discovery relating to the Phase One Issue to be completed by 6/16/05. Motions for SJ relating to the Phase One issue must be filed by 7/19/05; SJ oppositions must be filed by 8/9/05. (Court Reporter Shelly Killian.) (Lyness, Paul) (Entered: 04/05/2005)
04/19/2005	<u>12</u>	STIPULATION to Extend Time to Amend Pleadings or Join Parties to Litigation by Riso, Inc., Great American Insurance Company, Great American Insurance Company of New York, Great American Assurance Company, Great American Alliance Insurance Company. (Edge, Eugenia) (Entered: 04/21/2005)
04/29/2005	<u>13</u>	NOTICE of Change of Address by Martin C. Pentz (Pentz, Martin) (Entered: 04/29/2005)
05/04/2005	<u>14</u>	STIPULATION <i>re Time to Add Parties</i> by Riso, Inc.. (Pentz, Martin) (Entered: 05/04/2005)
05/04/2005	<u>15</u>	NOTICE of Withdrawal of Appearance Attorney Eric P. Magnuson terminated. c/s (Edge, Eugenia) (Entered: 05/04/2005)
06/16/2005	<u>16</u>	Joint MOTION Modify Phase One Schedule by Riso, Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Pentz, Martin) (Entered: 06/16/2005)
07/08/2005		Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>16</u> Motion to Modify Phase One Schedule/ Amend Scheduling Order. Motions for Summary Judgment should be filed on or before 8/18/05. Oppositions should be filed on or before 9/8/05. (Edge, Eugenia) (Entered: 07/08/2005)
07/08/2005		Set/Reset Deadlines: Summary Judgment Motions due by 8/18/2005. Oppositions due by 9/8/05. (Edge, Eugenia) (Entered: 07/08/2005)
08/02/2005	<u>17</u>	NOTICE of Change of Address by Robert A. Kole, A. Hugh Scott.c/s (Edge, Eugenia) (Entered: 08/03/2005)

08/18/2005	<u>18</u>	MOTION for Summary Judgment <i>on Insurers' Duty to Defend</i> by Riso, Inc.. (Attachments: # <u>1</u> Affidavit Affidavit of Daniel S. Weil# <u>2</u> Exhibit Exhibit 1 to Weil Affidavit (part 1)# <u>3</u> Exhibit Exhibit 1 to Weil Affidavit (Part 2)# <u>4</u> Exhibit Exhibit 2 to Weil Affidavit# <u>5</u> Affidavit Affidavit of Edwin G. Harvey# <u>6</u> Exhibit Exhibit 1 to Harvey Affidavit# <u>7</u> Exhibit Exhibit 2 to Harvey Affidavit# <u>8</u> Exhibit Exhibit 3 to Harvey Affidavit)(Pentz, Martin) (Entered: 08/18/2005)
08/18/2005	<u>19</u>	MEMORANDUM in Support re <u>18</u> MOTION for Summary Judgment <i>on Insurers' Duty to Defend</i> filed by Riso, Inc.. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B)(Pentz, Martin) (Entered: 08/18/2005)
08/18/2005	<u>20</u>	MOTION for Summary Judgment by Great American Insurance Company, Great American Insurance Company of New York, Great American Assurance Company, Great American Alliance Insurance Company. c/s(Edge, Eugenia) (Entered: 08/19/2005)
08/18/2005	<u>21</u>	MEMORANDUM in Support re <u>20</u> MOTION for Summary Judgment filed by Great American Insurance Company, Great American Insurance Company of New York, Great American Assurance Company, Great American Alliance Insurance Company. c/s (Edge, Eugenia) (Entered: 08/19/2005)
08/18/2005	<u>22</u>	STATEMENT of Material Undisputed facts re <u>20</u> MOTION for Summary Judgment. c/s (Edge, Eugenia) (Entered: 08/19/2005)
08/18/2005	<u>23</u>	AFFIDAVIT of Richard H. Nicolaides, Jr. re <u>20</u> MOTION for Summary Judgment by Great American Insurance Company, Great American Insurance Company of New York, Great American Assurance Company, Great American Alliance Insurance Company. (Attachments: # <u>1</u> Exhibit A thru Q) (Edge, Eugenia) (Entered: 08/19/2005)
09/08/2005	<u>24</u>	Opposition re <u>20</u> MOTION for Summary Judgment filed by Riso, Inc.. (Pentz, Martin) (Entered: 09/08/2005)
09/08/2005	<u>25</u>	RESPONSE to Motion re <u>20</u> MOTION for Summary Judgment (<i>Statement of Facts</i>) filed by Riso, Inc.. (Pentz, Martin) (Entered: 09/08/2005)
09/08/2005	<u>26</u>	MEMORANDUM in Opposition re <u>18</u> MOTION for Summary Judgment <i>on Insurers' Duty to Defend</i> filed by Great

		American Insurance Company, Great American Insurance Company of New York, Great American Assurance Company, Great American Alliance Insurance Company. c/s (Edge, Eugenia) (Entered: 09/09/2005)
09/08/2005	<u>27</u>	Response by Great American Insurance Company, Great American Insurance Company of New York, Great American Assurance Company, Great American Alliance Insurance Company to <u>19</u> Memorandum in Support of Motion/Statement of Facts. (Edge, Eugenia) (Entered: 09/09/2005)
10/13/2005	<u>28</u>	MOTION for Leave to File <i>Memorandum in Reply to GAIC's Opposition to Riso's Motion for Summary Judgment</i> by Riso, Inc.. (Attachments: # <u>1</u> Exhibit 1 (Reply Memorandum)# <u>2</u> Exhibit A to Reply Memorandum# <u>3</u> Exhibit B to Reply Memorandum)(Pentz, Martin) (Entered: 10/13/2005)
10/14/2005	<u>29</u>	Opposition re <u>28</u> MOTION for Leave to File <i>Memorandum in Reply to GAIC's Opposition to Riso's Motion for Summary Judgment</i> filed by Great American Insurance Company, Great American Insurance Company of New York, Great American Assurance Company, Great American Alliance Insurance Company. c/s. (Edge, Eugenia) (Entered: 10/17/2005)
12/13/2005		NOTICE of Hearing on Motion <u>18</u> MOTION for Summary Judgment <i>on Insurers' Duty to Defend</i> , <u>20</u> MOTION for Summary Judgment: Motion Hearing set for 2/22/2006 02:00 PM in Courtroom 9 before Judge George A. O'Toole Jr.. Please mark your calendars accordingly.(Lyness, Paul) (Entered: 12/13/2005)
01/27/2006		Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>28</u> Motion for Leave to File. Pursuant to their request, Great American is granted leave to file a Surreply within 10 days from the entry of this Order. (Lyness, Paul) (Entered: 01/27/2006)
01/27/2006	<u>30</u>	MEMORANDUM of Riso, Inc. in Reply to GAIC's Opposition to Riso's Motion for Summary Judgment re <u>18</u> MOTION for Summary Judgment <i>on Insurers' Duty to Defend</i> filed by Riso, Inc.. (Lyness, Paul) Additional attachment(s) added on 1/27/2006 (Lyness, Paul). (Entered: 01/27/2006)
02/06/2006	<u>31</u>	SUR-REPLY to Motion re <u>28</u> MOTION for Leave to File <i>Memorandum in Reply to GAIC's Opposition to Riso's Motion for Summary Judgment</i> filed by Great American Insurance

		Company, Great American Insurance Company of New York, Great American Assurance Company, Great American Alliance Insurance Company. (Kole, Robert) (Entered: 02/06/2006)
02/22/2006	●	ElectronicClerk's Notes for proceedings held before Judge George A. O'Toole Jr.: Motion Hearing held on 2/22/2006 re <u>18</u> MOTION for Summary Judgment <i>on Insurers' Duty to Defend</i> filed by Riso, Inc., <u>20</u> MOTION for Summary Judgment filed by Great American Insurance Company,, Great American Insurance Company of New York,, Great American Assurance Company,, Great American Alliance Insurance Company,. The court takes the matter under advisement. (Court Reporter Shelly Killian.) (Lyness, Paul) (Entered: 02/22/2006)
03/31/2006	●32	Judge George A. O'Toole Jr.: MEMORANDUM AND ORDER entered denying <u>18</u> Riso's Motion for Summary Judgment, granting <u>20</u> GAIC's Motion for Summary Judgment. Accordingly, declaratory judgment shall enter in favor of GAIC and against Riso in both actions declaring that (1) GAIC had no duty to defend Riso in the Modesto lawsuit and (2) GAIC had and has no duty to indemnify or reimburse Riso for any defense costs, judgment or settlement amounts, or any other liabilities incurred by Riso in defending the Modesto lawsuit. In light of this ruling, Riso cannot maintain its claim that GAIC breached the subject policies by failing to defend and/or indemnify them and therefore judgment shall enter in favor of GAIC on Riso's Breach of Contract claim. (Lyness, Paul) Additional attachment(s) added on 4/3/2006 (Lyness, Paul). (Entered: 04/03/2006)
03/31/2006	●33	Judge George A. O'Toole Jr.: ORDER entered. JUDGMENT (Lyness, Paul) (Entered: 04/03/2006)
04/03/2006	●	Notice of correction to docket made by Court staff. Correction: The Memorandum and Order (doc. #32) corrected because: document did not attach (Lyness, Paul) (Entered: 04/03/2006)
04/27/2006	●34	NOTICE OF APPEAL as to <u>32</u> Order on Motion for Summary Judgment,,,,,, <u>33</u> Judgment by Riso, Inc.. \$ 455 NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov/clerks/transcript.htm MUST be completed and submitted to the Court of Appeals. Appeal

		Record due by 5/17/2006. (Evans, Jeremy) (Entered: 04/27/2006)
05/01/2006	●	Filing fee: \$ 455, receipt number 72117 for <u>34</u> Notice of Appeal, (Edge, Eugenia) (Entered: 05/01/2006)
05/05/2006	● <u>35</u>	TRANSCRIPT ORDER FORM by Riso, Inc. for proceedings held on 2/22/2006 before Judge O'toole.. (Edge, Eugenia) (Entered: 05/08/2006)
05/08/2006	● <u>36</u>	CERTIFICATE OF SERVICE by Riso, Inc. re <u>35</u> Transcript Order Form. (Edge, Eugenia) (Entered: 05/09/2006)